6. Community & Privilege
   Community Mental Health Boards - AG Opinions 5709 - sharing information
   "APS/DMH" Agreement
   Child Custody Act - Act 91 of 1970
   AG Opinions 7149 - Non-custodial parent's right to records
   Child Protection Law - Act 238 0f 1975 - Reporting Child Abuse
   Act 236 of 1961 Revised Judicature Act Of 1961 - victim and sexual assault or domestic violence counselor; admissibility.
   Act 236 of 1961 - Physician-Patient Privilege, Act 368 of 1978 - Public Health Code Confidential Information, Public Health Code Privileged Communication
   PA 368 of 1978 - Confidentiality & HIV
   Confidentiality & HIV – Consumer information
   Poster re: providing information
   Questions re: Confidentiality: Law Enforcement, Serving Papers

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5709

May 20, 1980

MENTAL HEALTH:

Community mental health boards

Patient rights

A county community mental health board may obtain information concerning specific recipients of mental health services from private or public agencies with which it has contracted to provide mental health services to such recipients without necessity for securing the recipient's approval. Such information may be shared within the units of the community mental health program.

Honorable Claude A. Trim
State Representative
The Capitol
Lansing, Michigan 48909

You have requested my opinion on the following questions:

> (1) May a county community mental health board, which is legally defined as the 'Governing Body' and 'the Provider' of mental health services--require information about specific clients from the service provider agencies with which it contracts without the express agreement of the client?
>
> (2) May such a county community mental health board require its contracting service providers to share information about clients with each other, inasmuch as they are both part of the same single county mental health system?

1974 PA 258; MCLA 330.1001 et seq; MSA 14.800(1) et seq, 1974 PA 258, supra, MCLA 330.1200 et seq, is known as the Mental Health Code. 1974 PA 258, supra, ch 2, Sec. 200, et seq provides for county community mental health programs. 1974 PA 258, supra, Sec. 206 states that '[t]he purpose of a county community mental health program shall be to provide a range of mental health services for persons who are located within that county.' 1974 PA 258, supra, Sec. 208, as last amended by 1978 PA 166, requires that a minimum level of services be furnished through the county program. Upon establishment of a county mental health program, a twelve (12) member county community health board is established pursuant to 1974 PA 258, supra, Secs. 212 and 222.

1974 PA 258, supra, Sec. 226 sets forth the powers and duties of the county community mental health board and under subsection (g), the county community mental health board is empowered to approve and authorize all contracts for the providing of mental health services. Consideration must also be given to 1974 PA 258, supra, Sec. 226(h), which directs the county community health board to review and evaluate the quality, effectiveness and efficiency of services provided through the county program. Further, 1974 PA 258, supra, Sec. 226(j) permits the board to establish general policy guidelines within which the county program shall be executed by the director of the program. Also pertinent is 1974 PA 258, supra, Sec. 228, which states

'Subject to the provisions of this chapter, a board is authorized to enter into contracts for the purchase of mental health services with private or public agencies. . . .'

1974 PA 258, supra, ch 7, Sec. 700, et seq, sets forth the rights of recipients of mental health services. OAG, 1979-1980, No 5502, p ___ (July 2, 1979). 1974 PA 258, supra, Sec. 702(a) specifies that the receipt of mental health services '[s]hall not operate to deprive any person of his rights, benefits, or privileges.'

1974 PA 258, supra, Sec. 746, which concerns the records of recipients, states:

'(1) A complete record shall be kept current for each recipient of mental health services. The record shall at least include information pertinent to the services provided to the recipient, pertinent to the legal status of the recipient, required by this chapter or other provision of law, and required by rules or policies.

(2) The material in the record shall be confidential to the extent it is made confidential by section 748.'

In 1974 PA 258, supra, Sec. 748, the legislature has provided:

'(1) Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, county community mental health program, or licensed private facility, [1] whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section.

(2) When information is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

(3) Any person receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

. . .

(5) Information may be disclosed if the holder of the record and the recipient, his parents if he is a minor, or his legally appointed guardian consent:

(a) To providers of mental health services to the recipient.

(b) To the recipient or any other person or agency, provided that in the judgment of the holder the disclosure would not be detrimental to the recipient or others.

(6) Information may be disclosed in the discretion of the holder of the record:

(a) As necessary in order for the recipient to apply for or receive benefits.

(b) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject [sic, 'subject'] of the information can be identified from the disclosed information only when such identification is essential in order to achieve the purpose for which the information is sought or when preventing such identification would clearly be impractical, but in no event when the subject of the information is likely to be harmed by such identification.

(c) To providers of mental or other health services or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other persons.' [Emphasis supplied.]

Further, 1974 PA 258, supra, Sec. 750, specifies that communications between a mental health recipient and a psychiatrist or psychologist are privileged. See also RJA, 1961, Sec. 2157; MCLA 600.2157; MSA 27A.2157; People v Lapsley, 26 Mich App 424; 182 NW2d 601 (1970), lv app den 384 Mich 825 (1971); the freedom of information act, 1976 PA 442, as amended; Sec. 13(1)(i); MCLA 15.243(1)(i); MSA 4.1801(13)(1)(i).

(1) May a county community mental health board, which is legally defined as the 'Governing Body' and 'the Provider' of mental health services--require information about specific clients from the service provider agencies with which it contracts without the express agreement of the client?

1974 PA 258, Sec. 748(1), supra, provides that information concerning a recipient may be disclosed 'outside' the county community mental health program only as provided in section 748. This provision is designed to protect against the dissemination of information to facilities or persons outside the community mental health program. Where a recipient receives mental health services pursuant to a county community health program, the county program is the 'holder' of the record under 1974 PA 258, Sec. 748(1), supra. Thus, information concerning recipients may be circulated within units of the community mental health program, which includes those private or public agencies with which the county mental health board has contracted for mental health services, pursuant to 1974 PA 258, Sec. 228, supra.

A review of mental health recipients' privacy rights prior to the enactment of 1974 PA 258, Sec. 748, supra, is instructive.

Community mental health service programs were initially established pursuant to 1963 PA 54. [2] Thereafter, 1973 PA 85 added Sec. 15 to 1963 PA 54, supra, to provide:

> 'The department of mental health in developing and operating its community services data system shall insure that a patient's right of privacy is held inviolate and to this end the department will not collect and store community services data which would make it possible to identify a patient by name. Further, no such information in the possession of the department prior to the effective date of this section [August 5, 1973] may be disclosed.' [3]

1974 PA 107 [4] was enacted to provide for the licensing and regulation of mental hospitals, psychiatric hospitals and psychiatric units. 1974 PA 107, supra, Sec. 9, stated:

> 'The director [of the department of mental health] shall make inspections, require reports, have access to information to the extent necessary to carry out the purposes of this act and the rules promulgated by him. A licensee shall include on a patient's medical chart a complete record of the purpose of hospitalization, of tests and examinations performed, and of observations made and treatments provided. Representatives of the department of mental health shall respect the confidentiality of records pertaining to patient care, and shall not disclose the contents of the records or the identity of the patient, except upon court order.'

Thus, under the former provisions of 1963 PA 54, Sec. 15, supra, the privacy of patients who received community mental health services was to be held inviolate, and patient data may not be maintained in any manner whereby a patient may be identified by name. Further, under 1974 PA 107, Sec. 9, supra, patients' privacy rights were further safeguarded as patient records were to be held confidential by the department of mental health, and neither the contents of a record nor the name of a patient may be disclosed without court order. However, no provision of 1963 PA 53, supra, or 1974 PA 107, supra, in safeguarding the privacy rights of recipients of mental health services prohibited the dissemination of a patient's record information within the framework of the mental health system, in furtherance of the furnishing of mental health services.

When enacting a comprehensive statute, such as 1974 PA 258, supra, the legislature is presumed to have knowledge of existing statutes. Skidmore v Czapiga, 82 Mich App 689; 267 NW2d 150, lv den 403 Mich 810 (1978). Therefore, it must be presumed the legislature in enacting 1974 PA 258, Sec. 748, supra, was cognizant of the provisions of 1963 PA 54, Sec. 15, supra, and 1974 PA 107, Sec. 9, supra.

Thus, information concerning a recipient which is circulated within the community mental health program must be held as confidential information and not open to public inspection; 1974 PA 258, Sec. 748(1), supra. Further, 1974 PA 258, Sec. 748(5)(a), supra, provides that information may be disclosed to others who provide mental health services to the recipient, where the holder of the record and the recipient (or the minor recipient's parents, or guardian) consent; this provision is applicable to dissemination of information to a facility which is not part of the community mental health program. However, it must be emphasized that information concerning a recipient which is utilized within the framework of the county mental health program must not disclose the identity of the recipient, unless germane to the authorized purpose for which the information was sought, and no other information shall be disclosed unless germane to such authorized purpose. 1974 PA 258, Sec. 748(2), supra. The mode of proceding mental health services must 'protect and promote the basic human dignity to which a recipient of services is entitled.' 1974 PA 258, supra, Sec. 704(3).

Therefore, it is my opinion that a county community mental health board may obtain information concerning specific recipients from private or public agencies with which it has contracted to provide mental health services to recipients, where such information is sought for a purpose germane to the county mental health program, without procuring the consent of the recipient.

(2) May such a county community mental health board require its contracting service providers to share, information about clients with each other, inasmuch as they are both of the same single county mental health system?

In accordance with my response to your first question, and in light of the powers and duties of county community mental health boards set out in 1974 PA 258, Sec. 226, supra, it is also my opinion that a county community mental health board may require the service providers with which it contracts to share information concerning recipients, so long as such information is germane to the provision of mental health services, subject to the provisions of 1974 PA 258, Sec. 748, supra, provided that such information is not disseminated outside the county mental health program.

Frank J. Kelley

Attorney General

[1] 'Facility' is defined in 1974 PA 258, supra, Sec. 700(c) as 'a residential facility which provides mental health services, which is licensed by the state or is operated by or under contract with a public agency.'

[2] Repealed by 1974 PA 258, supra, Sec. 1106(a).

[3] This provision appears in substantially the same language in 1974 PA 258, supra, Sec. 244(b)(ii).

[4] Repealed by 1974 PA 258, Sec. 1106(a), supra fn 1.

# AGREEMENT BETWEEN DSS & CMH ON APS INVESTIGATIONS

An Agreement between the Michigan Department of Social Services and the Community Mental Health Board on Adult Protective Services (APS) Investigations as required under 1982 Public Act 519, 1974 Public Act 258, and 1979 Public Act 218 as amended.

## Introduction:

Adults receiving mental health services either directly or under contract with the County Community Mental Health (CMH) Board are assured protection from abuse and neglect under the Mental Health Code. The County Department of Social Services (DSS) is also mandated by 1982 Public Act 519 to provide Protective Services to vulnerable adults as determined necessary after investigation of reports of abuse, neglect, or exploitation. Michigan Department of Social Services AFC Licensing Division (MDSS AFC Licensing) is mandated in Public Act 218 to report and investigate abuse, neglect, and exploitation of individuals in licensed AFC facilities. Recognizing that CMH, DSS, and MDSS AFC Licensing are each responsible for the protection of adults, the parties agree to develop a coordinated approach toward the reporting and investigation of complaints.

## Purpose:

To enter into an agreement among DSS, CMH, and MDSS AFC Licensing to more effectively and cooperatively protect the rights of recipients through each entity's statutorily prescribed role in the reporting and investigation of alleged or suspected abuse, neglect, or exploitation of adults participating in programs under the auspices of CMH, including service provider subcontracted residential programs.

## Responsibility To Report Suspected Abuse, Neglect, and Exploitation Of Adults In Mental Health Programs

Each employee of a mental health program under the auspices of a CMH board, who has knowledge of, suspects, or has reasonable cause to believe an adult in a home, facility, or a program has been abused, neglected, or exploited, shall report immediately to their respective Recipient Rights Advisor. A report shall also be made to the APS local office complaint coordinator, and, when the harm occurs in a licensed home, to the appropriate DSS licensing consultant. The initial report shall be verbal with a written report to follow within 24 hours.

AGREEMENT BETWEEN DSS & CMH ON APS INVESTIGATIONS (PAGE 2)



Each DSS APS worker who has knowledge of, suspects, or has reasonable cause to believe an adult in a licensed home, facility, or program of a CMH board has been abused, neglected, or is exploited, shall report immediately to the respective Recipient Rights Advisor, and, when the harm occurs in a licensed home, to the appropriate DSS licensing consultant. This report shall be verbal with a written complaint to follow within 24 hours.

Each MDSS Licensing Consultant who has knowledge of, suspects, or has reasonable cause to believe an adult in a licensed home, has been abused, neglected, or is exploited, shall report immediately to the respective Recipient Rights Advisor and DSS APS local office complaint coordinator. This report shall be verbal with a written complaint to follow within 24 hours.

Responsibility To Investigate Reports Of Suspected Abuse, Neglect, Or Exploitation Of Adults In Mental Health Programs, and To Submit Written Reports:

DSS APS shall have responsibility for the investigation of reports of suspected abuse, neglect, or exploitation of an adult in a community mental health program, licensed group home, or hospital psychiatric unit.

Concurrently, the respective Recipient Rights Officer/Advisor shall begin an investigation in accordance with CMH policy.

DSS AFC licensing shall have responsibility for the investigation of reports of licensing violations.

In the interest of efficiency and to avoid unnecessary duplication, local DSS APS, DSS AFC licensing, and CMH Recipient Rights shall develop procedures for coordinating investigations. Local procedures must assure that individual investigative responsibilities are met.

AGREEMENT BETWEEN DSS & CMH ON APS INVESTIGATIONS (PAGE 3)

-3-

Responsibility To Share Investigation Reports Of Abuse, Neglect, and Exploitation In Mental Health Programs

The DSS local office APS Complaint Coordinator shall submit a complete report for all investigations of abuse, neglect, or exploitation in Mental Health Programs. The report shall be submitted within 30 days to the following, as appropriate:

a. The CMH Board's Office of Recipient Rights

b. The Mental Health Services Provider Director

c. The Administrator of a private hospital under contract with CMH

d. The MDSS Licensing Consultant when residential home/facility is licensed under 1979 P.A. 218

DSS AFC licensing shall submit a complete report for all investigations of abuse, neglect, or exploitation. The report shall be submitted within 30 calendar days to the following, as appropriate:

a. The CMH Board's Office of Recipient Rights

b. Respective Adult Protective Service - local office

c. The Mental Health Services Provider Director

d. Respective Home Licensee/Operator

The Recipient Rights Officer/Advisor shall submit a complete report for all investigations of abuse, neglect, or exploitation of adults residing in licensed facilities. The report shall be submitted within 30 calendar days to the following, as appropriate.

a. The local office Adult Protective Service Complaint Coordinator

b. In the case of licensed adult foster care homes the respective DSS AFC Licensing Consultant

AGREEMENT BETWEEN DSS & CMH ON APS INVESTIGATIONS (PAGE 4)

Administration:

CMH shall provide to DSS a list of all residential homes and private hospitals under contract to the Board within 30 days of the effective date of this agreement.

DSS shall provide to CMH the names of the APS complaint coordinators.

The CMH Board shall make available to DSS the names, addresses, and phone numbers of all recipient rights advisors. The list shall be updated as needed, or, at least, annually.

Resolution of disputes regarding implementation of this agreement shall first be attempted by frontline staff in the organizations involved. If unsuccessful, the issue shall be referred to CMH, DSS, and MDSS AFC Licensing Administration(s) for resolution.

This Agreement shall be effective upon signatures of the local office directors of DSS, CMH board directors, and MDSS AFC Licensing Area Managers.

The parties agree to meet periodically to review compliance and content of this agreement and recommend modifications, if necessary.

Signed: _____

for Community Mental Health Board for

_____,
_____,
_____,
_____,

_____
Counties

Date: _____

Signed: _____

DSS County Director Representing

_____,
_____,
_____,
_____,

_____
Counties

Date: _____

Signed: _____
MDSS Adult Foster Care Licensing Area Manager
Date: _____

Signed: _____
Gerald H. Miller, Director
Michigan Department of Social Services

Date: _____

# CHILD CUSTODY ACT OF 1970 (EXCERPT)
## Act 91 of 1970

### 722.30 Access to records or information by noncustodial parent.

Sec. 10.

Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section, "records or information" includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education.

**History:** Add. 1996, Act 304, Eff. Jan. 1, 1997

http://www.legislature.mi.gov/(S(pe22jlftqsf4ph3aoi0gqcfb))/mileg.aspx?page=getObject&objectName=mcl-722-30

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CHILDREN AND MINORS: Parent's access to minor's mental health records

MENTAL HEALTH:

A parent to whom a court has granted joint legal custody, but not physical custody, of a minor child may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code, unless in the written judgment of the holder of the records the disclosure would be detrimental to the minor child or others.

Opinion No. 7149

February 20, 2004

Honorable Stephen Adamini
State Representative
The Capitol
Lansing, MI 48913

You have asked whether a parent to whom a court has granted joint legal custody, but not physical custody, of a minor child, may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code.

Your question seeks clarification of OAG, 2001-2002, No 7092, p 58 (October 16, 2001), which addressed whether section 10 of the Child Custody Act of 1970[1] requires disclosure of a minor's mental health records to the child's noncustodial parent without the consent of the custodial parent required by section 748(6) of the Mental Health Code. That opinion, however, did not consider any distinctions between physical and legal custody in concluding that section 10 of the Child Custody Act does not require disclosure of a minor's mental health services records to the child's noncustodial parent without the consent of the custodial parent required by section 748(6) of the Mental Health Code. You advise that mental health treatment providers seek further guidance in situations where parents share joint legal custody, but not physical custody.

The Mental Health Code requires that records be maintained for recipients of mental health services and that the material in those records "shall be confidential to the extent it is made confidential by section 748." MCL 330.1746(1). Section 748(1) reiterates this confidentiality requirement and provides that the information may be disclosed "only in the circumstances and under the conditions set forth in this section or section 748a."[2] MCL 330.1748(1). Section 748(6) of the Mental Health Code, which describes circumstances where confidential information may be disclosed, is the focus of your inquiry. Section 748(6) states:

> Except as otherwise provided in subsection (4),[3] if consent is obtained from the recipient, the recipient's guardian with authority to consent, *the parent with legal custody of a minor recipient,* or the court-appointed personal representative or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:
>
> > (a) A provider of mental health services to the recipient.

> (b) The recipient or his or her guardian or *the parent of a minor recipient* or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others. [MCL 330.1748(6); emphasis added.]

Thus, unless the holder of the record determines in writing that the disclosure would be detrimental to the recipient or others, section 748(6) authorizes disclosure of confidential information regarding a minor recipient if the parent with "legal custody" of the minor consents.

A cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 611; 321 NW2d 668 (1982). Meaning and effect must be given to every word and sentence of a statute, *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000), so as to produce, if possible, a harmonious result. *Weems v Chrysler Corp*, 448 Mich 679, 699-700; 533 NW2d 287 (1995). Thus, it becomes necessary to determine the meaning of "legal custody" by giving effect to both words used together. Although the Mental Health Code does not define the term "legal custody," guidance as to its meaning is found in the Child Custody Act. "Joint custody" is provided for and defined in subsections (1) and (7) respectively of section 6a of the Child Custody Act, which state in pertinent part:

> (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody . . . . In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child . . . .
>
> * * *
>
> (7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:
>
> > (a) That the child shall reside alternately for specific periods with each of the parents.
> >
> > (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child. [MCL 722.26a(1) and (7).]

In *Wellman v Wellman*, 203 Mich App 277, 279 (1994), the Court of Appeals analyzed this provision:

> In substance, custody disputes between parents are governed by MCL 722.26a; MSA 25.312(6a). In particular, at the request of either parent, as here, the trial court "shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request." MCL 722.26a(1); MSA 25.312(6a)(1). As used in that section, the term "joint custody" means an order that specifies either that "the child shall reside alternately for specific periods with each of the parents," or that "the parents shall share decision-making authority as to the important decisions affecting the welfare of the child," or both. MCL 722.26a(7); MSA 25.312(6a)(7). The trial court must determine whether joint custody is in the best interest of the child by considering the factors enumerated in MCL 722.23; MSA 25.312(3), and by considering whether "the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(a) and (b); MSA 25.312(6a)(1)(a) and (b).

The Court of Appeals went on to make a distinction between a grant of joint legal custody and a grant of physical custody under section 6a of the Child Custody Act:

> *Further, we are not convinced that it was inconsistent for the trial court to grant joint legal custody while denying joint physical custody.* While the parties may have had prior disagreements over visitation, there was also evidence that it was in the children's best interests to maintain more contact with their father than one would normally expect if the mother had sole custody and the father had nothing more than visitation rights. [203 Mich App at 280.]

Thus, the type of joint custody defined in section 6a(7)(a) of the Child Custody Act, MCL 722.26a(7)(a), is generally referred to as joint *physical* custody. The type of joint custody defined in section 6a(7)(b) of the Child Custody Act is generally referred to as joint *legal* custody. Under the Child Custody Act, however, both types are referred to as "joint custody."[4]

Indeed, the Legislature has recognized the distinction between legal and physical custody in several other provisions of the Mental Health Code. See, e.g., MCL 330.748(5) (a parent "with legal and physical custody" of a minor recipient may consent to release of confidential records to an attorney for the recipient); MCL 330.1716(1)(c) (only a parent with "legal and physical custody" can consent to surgery); MCL 330.1717(1)(b) (only a parent with "legal and physical custody" can consent to electroconvulsive therapy).

Section 748(6) of the Mental Health Code authorizes disclosure of confidential information in a minor recipient's mental health records to a parent of the minor if the parent with "legal custody" of a minor gives consent and the disclosure would not be detrimental to the recipient or others according to the holder of the records. Significantly, in contrast to other sections of the Mental Health Code in which the Legislature has required both "legal and physical" custody, section 748(6) requires only "legal custody." Under the doctrine of statutory construction holding that the express mention in a statute of one thing implies the exclusion of other similar things,[5] the Legislature's choice to require "legal" but not "physical" custody in section 748(6) must be given effect. Thus, a parent who has "legal" custody is authorized to consent to the release of his or her minor child's mental health records, regardless of whether he or she has physical custody.

This conclusion is also supported by sound public policy. A parent who is granted legal custody of a child "share[s] decision making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7)(b). Access to a minor child's mental health records may be critical in assuring that this decision-making authority is exercised knowledgably and in accordance with the best interests of the child.

It is my opinion, therefore, that a parent to whom a court has granted joint legal custody, but not physical custody, of a minor child may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code, unless in the written judgment of the holder of the records the disclosure would be detrimental to the minor child or others.

MIKE COX
Attorney General

[1]Section 10 of the Child Custody Act, MCL 722.30, provides: "Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. . . ."

[2]Section 748a, MCL 330.1748a, deals with neglected and abused children and is not relevant to your question.

[3]Subsection 4 deals with adult recipients and is not relevant to your question.

[4]The legal forms approved by the State Court Administrative Office for use in matters involving the Friend of the Court also recognize a distinction between legal custody and physical custody. Form FOC 89, "ORDER REGARDING CUSTODY AND PARENTING TIME," identifies four different types of custody: 1) joint physical custody; 2) joint legal custody; 3) sole legal custody; or 4) sole physical custody. Form FOC 89 can be found at http://courts.michigan.gov/scao/courtforms/domesticrelations/custody-parentingtime/foc89.pdf.

[5]Michigan recognizes the principle of *expressio unius est exclusio alterius. Stowers v Wolodzko,* 386 Mich 119, 133; 191 NW2d 355 (1971).

# CHILD PROTECTION LAW (EXCERPT)
## Act 238 of 1975

**722.623 Individual required to report child abuse or neglect; written report; transmitting report to county department; copies to prosecuting attorney and probate court; conditions requiring transmission of report to law enforcement agency; pregnancy of or venereal disease in child less than 12 years of age; exposure to or contact with methamphetamine production.**

Sec. 3.

(1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, a person employed in a professional capacity in any office of the friend of the court, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school is adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department in the same manner as required under subdivision (a):

(i) Eligibility specialist.

(ii) Family independence manager.

(iii) Family independence specialist.

(iv) Social services specialist.

(v) Social work specialist.

(vi) Social work specialist manager.

(vii) Welfare services specialist.

(c) Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order. A person required to report under this subdivision shall report in the same manner as required under subdivision (a).

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county department of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.
(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c, sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, or section 7401c of the public health code, 1978 PA 368, MCL 333.7401c, involving methamphetamine has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall, within 24 hours of completion, transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.
(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect or discovers evidence of or receives a report of an individual allowing a child to be exposed to or to have contact with methamphetamine production, and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect or allowing a child to be exposed to or to have contact with methamphetamine production, was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county department of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect or allowed a child to be exposed to or to have contact with methamphetamine production, is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.
(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.
(9) In conducting an investigation of child abuse or child neglect, if the department suspects that a child has been exposed to or has had contact with methamphetamine production, the department shall immediately contact the law enforcement agency in the county in which the incident occurred.

**History:** 1975, Act 238, Eff. Oct. 1, 1975 ;-- Am. 1978, Act 252, Eff. Mar. 30, 1979 ;-- Am. 1978, Act 573, Eff. Mar. 30, 1979 ;-- Am. 1980, Act 511, Imd. Eff. Jan. 26, 1981 ;-- Am. 1984, Act 418, Eff. Mar. 29, 1985 ;-- Am. 1988, Act 372, Eff. Mar. 30, 1989 ;-- Am. 1994, Act 177, Imd. Eff. June 20, 1994 ;-- Am. 2002, Act 10, Imd. Eff. Feb. 14, 2002 ;-- Am. 2002, Act 661, Imd. Eff. Dec. 23, 2002 ;-- Am. 2002, Act 693, Eff. Mar. 1, 2003 ;-- Am. 2006, Act 264, Imd. Eff. July 6, 2006 ;-- Am. 2006, Act 583, Imd. Eff. Jan. 3, 2007 ;-- Am. 2008, Act 300, Imd. Eff. Oct. 8, 2008 ;-- Am. 2008, Act 510, Imd. Eff. Jan. 13, 2009

**REVISED JUDICATURE ACT OF 1961 (EXCERPT) Act 236 of 1961**
**600.2157 Physician-patient privilege; waiver.**
Sec. 2157. Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon. If the patient brings an action against any defendant to recover for any personal injuries, or for any malpractice, and the patient produces a physician as a witness in the patient's own behalf who has treated the patient for the injury or for any disease or condition for which the malpractice is alleged, the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition. If a patient has died, the heirs at law of the patient, whether proponents or contestants of the patient's will, shall be considered to be personal representatives of the deceased patient for the purpose of waiving the privilege under this section in a contest upon the question of admitting the patient's will to probate. If a patient has died, the beneficiary of a life insurance policy insuring the life of the patient, or the patient's heirs at law, may waive the privilege under this section for the purpose of providing the necessary documentation to a life insurer in examining a claim for benefits.
History: 1961, Act 236, Eff. Jan. 1, 1963 ;- Am. 1989, Act 102, Eff. Sept. 1, 1989 ;- Am. 1995, Act 205, Imd. Eff. Nov. 29, 1995
http://law.justia.com/michigan/codes/2006/mcl-chap600/mcl-600-2157.html

**PUBLIC HEALTH CODE (EXCERPT) Act 368 of 1978**
**333.18237 Confidential information; disclosure; waiver.**
Sec. 18237 A psychologist licensed or allowed to use that title under this part or an individual under his or her supervision cannot be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity if the information is necessary to enable the psychologist to render services. Information may be disclosed with the consent of the individual consulting the psychologist, or if the individual consulting the psychologist is a minor, with the consent of the minor's guardian, pursuant to section 16222 if the psychologist reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281. In a contest on the admission of a deceased individual's will to probate, an heir at law of the decedent, whether a proponent or contestant of the will, and the personal representative of the decedent may waive the privilege created by this section.
History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1993, Act 79, Eff. Apr. 1, 1994 ;- Am. 1998, Act 496, Eff. Mar. 1, 1999
http://www.legislarure.mi.gov

**333.18117 Privileged communications; disclosure of confidential information.**
Sec. 18117 For the purposes of this part, the confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client of the licensed professional counselor or a limited licensed counselor are privileged communications, and this part does not require a privileged communication to be disclosed, except as otherwise provided by law. Confidential information may be disclosed only upon consent of the client, pursuant to section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281.
History: Add. 1988, Act 421, EfF. Mar. 30, 1989 ;-- Am. 1993, Act 79, EfF. Apr. 1, 1994 ;-- Am. 1998, Act 496, EfF. Mar. 1, 1999
http://www.legislature.mi.gov

# REVISED JUDICATURE ACT OF 1961 (EXCERPT)
## Act 236 of 1961

**600.2157a Definitions; consultation between victim and sexual assault or domestic violence counselor; admissibility.**

Sec. 2157a. (1) For purposes of this section:

(a) "Confidential communication" means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.

(b) "Domestic violence" means that term as defined in section 1501 of Act No. 389 of the Public Acts of 1978, being section 400.1501 of the Michigan Compiled Laws.

(c) "Sexual assault" means assault with intent to commit criminal sexual conduct.

(d) "Sexual assault or domestic violence counselor" means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.

(e) "Sexual assault or domestic violence crisis center" means an office, institution, agency, or center which offers assistance to victims of sexual assault or domestic violence and their families through crisis intervention and counseling.

(f) "Victim" means a person who was or who alleges to have been the subject of a sexual assault or of domestic violence.

(2) Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.

**History:** Add. 1984, Act 340, Eff. Mar. 29, 1985

# PUBLIC HEALTH CODE (EXCERPT)
## Act 368 of 1978

**333.5131 Serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome; confidentiality of reports, records, data, and information; test results; limitations and restrictions on disclosures in response to court order and subpoena; information released to legislative body; applicability of subsection (1); immunity; identification of individual; violation as misdemeanor; penalty.**

Sec. 5131.

(1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification under section 5114a, that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential. A person shall release reports, records, data, and information described in this subsection only pursuant to this section.

(2) Except as otherwise provided by law, the test results of a test for HIV infection or acquired immunodeficiency syndrome and the fact that such a test was ordered is information that is subject to section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(3) The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

(a) A court that is petitioned for an order to disclose the information shall determine both of the following:

(i) That other ways of obtaining the information are not available or would not be effective.

(ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.

(b) If a court issues an order for the disclosure of the information, the order shall do all of the following:

(i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.

(ii) Limit disclosure to those persons whose need for the information is the basis for the order.

(iii) Include such other measures as considered necessary by the court to limit disclosure for the protection of the patient.

(4) A person who releases information pertaining to HIV infection or acquired immunodeficiency syndrome to a legislative body shall not identify in the information a specific individual who was tested or is being treated for HIV infection or acquired immunodeficiency syndrome.

(5) Subject to subsection (7), subsection (1) does not apply to the following:

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(b) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by a physician or local health officer to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision imposes an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed

as having acquired immunodeficiency syndrome. A physician or local health officer may discharge the affirmative duty imposed under this subdivision by referring the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to the appropriate local health department for assistance with partner notification under section 5114a. The physician or local health officer shall include as part of the referral the name and, if available, address and telephone number of each individual known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome.

(c) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by an authorized representative of the department or by a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to whom information is disclosed under this subdivision is subject to subsection (1).

(d) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the disclosure is expressly authorized in writing by the individual. This subdivision applies only if the written authorization is specific to HIV infection or acquired immunodeficiency syndrome. If the individual is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian of the individual.

(e) Information disclosed under section 5114, 5114a, 5119(3), 5129, 5204, or 20191 or information disclosed as required by rule promulgated under section 5111.

(f) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is part of a report required under the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

(g) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by the department of human services, the probate court, or a child placing agency in order to care for a minor and to place the minor with a child care organization licensed under 1973 PA 116, MCL 722.111 to 722.128. The person disclosing the information shall disclose it only to the director of the child care organization or, if the child care organization is a private home, to the individual who holds the license for the child care organization. An individual to whom information is disclosed under this subdivision is subject to subsection (1). As used in this subdivision, "child care organization" and "child placing agency" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(6) A person who releases the results of an HIV test or other information described in subsection (1) in compliance with subsection (5) is immune from civil or criminal liability and administrative penalties including, but not limited to, licensure sanctions, for the release of that information.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection does not apply to information disclosed under subsection (5)(d), (f), or (g).

(8) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both, and is liable in a civil action for actual damages or $1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.

**History:** Add. 1988, Act 488, Eff. Mar. 30, 1989 ;-- Am. 1989, Act 174, Imd. Eff. Aug. 22, 1989 ;-- Am. 1989, Act 271, Imd. Eff. Dec. 26, 1989 ;-- Am. 1992, Act 86, Eff. Mar. 31, 1993 ;-- Am. 1994, Act 200, Imd. Eff. June 21, 1994 ;-- Am. 1997, Act 57, Eff. Jan. 1, 1998 ;-- Am. 2010, Act 119, Imd. Eff. July 13, 2010 **Admin Rule:** R 325.9001 et seq. of the Michigan Administrative Code

# Your HIV Status is Your Private Business

**Kendra S. Kleber**
Attorney at Law
Director of Legal Services
Michigan Advocates Exchange, Inc.

---

Generally, Michigan law protects the confidentiality of every person's HIV status. With a few exceptions, it is against the law to talk about HIV or AIDS status. It doesn't matter if the disclosure happens by accident or purposefully, and it doesn't matter if the person being talked about is HIV-positive or HIV-negative. There are some situations when it is not against the law to talk about someone's HIV status, but there are not many and they are very specific. For example, anyone can disclose someone's identity and their HIV status to the local health department, if they believe that there is a real risk of HIV transmission.

Michigan law says that if you are HIV-positive then you must disclose your status to a sex partner before you become intimate, or else you have committed a felony. Because this felony exposure law forces you to disclose your status, you can't keep it a perfect secret. That means you may have problems with your confidential information being repeated without your permission.

If you, your family or your property are in physical danger because of harassment or bullying related to your HIV status, you need to call for help. Start with the police. (You might also call the local prosecutor's office, the sheriff's office, the State Police, an HIV case management agency, or a lawyer.) Say that you are in danger, that you have a disability, and that you are afraid for your safety. And then listen to what they have to say. You may want to call more than one agency so you can choose whose advice you want to follow. <u>You do not have to reveal your HIV status to be protected from a real threat of physical danger.</u>

If you have a feeling that someone is talking about your HIV status, start taking notes. Keep a record of what you find out, when you learn it, who you think is doing the talking, who told you it was happening, and what reasons someone may have for revealing your HIV status. You need as much information as possible to explain why you think that someone is talking about you in case you end up calling the police.

If someone does reveal your HIV status without your permission, it may be a misdemeanor. You can file a police report and perhaps have them arrested. If you call the police and they do not know about the HIV confidentiality law, ask them (nicely) to look it up in their warrant book (the number of the law is MI Compiled Law section 333.5131).

You may also be able to sue the person who revealed your status. You have the right to file a lawsuit for $1,000 per actual disclosure, which means that you might be able to sue in Small Claims Court (where you can tell your story to the judge yourself, without a lawyer). If the person who talked about your status learned it while doing their job, you may be able to sue their employer.

If you don't want to get the police involved, and you don't want to file a lawsuit, you can still inform the person that he or she is breaking the law. The attached letter could be used to ask the person to stop talking about your status. The letter explains the law and the penalties for breaking it, and is designed to get our phone number to people who need more information. You can also use the "shut up cards" that we've printed, to help give people information about HIV and confidentiality.

Every person in Michigan has the right to insist that their HIV status be kept confidential. Just like you have the right to confidentiality, you also have the obligation not to reveal someone else's HIV status. Be careful to protect the HIV/AIDS status of any friends, acquaintances or people you meet at HIV-specific service providers like your doctor or an AIDS service organization. No matter how public someone may be about their HIV status, if they haven't given <u>you</u> permission to talk about it, then don't.

The best way to protect your HIV status is to be really careful about who you tell. Deciding who and how to tell are big decisions, and you may be able to prevent a lot of problems by talking with a counselor, a social worker, a case manager or a lawyer before you disclose your status to anyone other than your sex partner.

These materials are funded in part by the Colin Higgins Foundation of San Francisco.

**Hospital Name/Logo**
***Mental Health Services***

## Important Information for Visitors:

**Your Hospital Name's** Mental Health Services is committed to providing quality, compassionate care to your loved one.

Please understand that there are State and Federal laws in place to protect the privacy and confidentiality of your adult loved one. Because of this, we are unable to release any type of information to you without written permission from our patient. We are, however, able to take information from you about your loved one that you feel is important for us to know in order to better care for him/her.

If you have information that you feel is imperative for our treatment team to be aware of, please contact us by calling XXX-XXX-XXXX. You may ask to speak with the social worker or nurse on duty, and we will be happy to communicate your concerns with your loved one's physician and the rest of the treatment team.

Licensing stated that the hospital could also solicit information when a family member calls. Asking to tell about:
psychiatric history,
medications,
what worked
how are things going
It is OK to ask about social history & solicit information without transmitting what is happening at the hospital.

## Questions regarding Confidentiality

### 1. Law Enforcement

From: Dianne L. Baker
Subject: Re: Suggested Language: Court Order Allowing Disclosure of Information to Law Enforcement

When working with law enforcement, it is not inappropriate to provide tools for better inter-agency interaction. Officers coming to your LPH/U or CMH Group Home may wish to use this language for obtaining orders from the Judge:

**Order for Disclosure of Patient Information And Authority to Conduct an On-Site Interview**
An application for disclosure of patient information and the authority to enter (Mental Health Service Provider. Address) to (e.g. conduct an interview with, arrest, search) (named patient) who is believed to be under care at the above location having been filed

IT IS HEREBY ORDERED and in compliance with MCL 330.1748(5) that any mental health care provider at the above mental health service provider location where the named person is treated and/or detained is hereby ordered to provide access to the patient and to disclose to law enforcement authorities admission and discharge information regarding the person.
**DCH-ORR February 2009**

### 2. Serving Papers

From: Dianne L. Baker
Subject: Serving Papers on Mental Health Patient

In my opinion, a practical process would be this:

When a process server shows up with papers for a person thought to be on the mental health unit, staff response should be IN ALL CASES; "I'm sorry but based on state and federal confidentiality laws, I cannot confirm or deny that the named individual is here. If that person is here, however, I will let them know that you wish to see them. You may want to check back with us later."

The staff person then lets the patient know that there was an attempt to serve papers and ask them if they wish to be served. If they consent, when the process server checks back, you can let them know that the patient will see them at such and such a time. Make sure you get written authorization to identify the patient and their location to the process server. Make sure you say this to every process server. If hte patient does not want to receive the papers, when the server calls or shows up again, repeat the same thing.

I would warn staff not to accept the papers, touch them or be touched by them at any time as this may be considered personal service anyway. As always, PLEASE CONSULT WITH LEGAL COUNSEL ON HOW THEY WISH YOU TO PROCEED.
**DCH-ORR November 2001**